LIBRARY
SUPREME COURT, U. S.

MAY 24 1974

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-872

STATE OF LOUISIANA,
LOUISIANA MUNICIPAL ASSOCIATION
AND LOUISIANA PUBLIC SERVICE COMMISSION,
Petitioners,

v.

FEDERAL POWER COMMISSION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

PETITION OF STATE OF LOUISIANA AND ALLIED PETITIONERS FOR REHEARING

THE HONORABLE EDWIN EDWARDS
Governor of the State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

HONORABLE WILLIAM J. GUSTE, JR.
Attorney General for the State
of Louisiana
State Capitol Building
Baton Rouge, Louisiana

ARNOLD D. BERKELEY
Suite 504, 1735 Eye Street, N.W.
Washington, D.C. 20006
Attorney for Petitioners

May, 1974

THE CASILLAS PRESS, INC.—1717 K Street, N. W.—Washington, D. C.—223-1220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-872

STATE OF LOUISIANA,
LOUISIANA MUNICIPAL ASSOCIATION
AND LOUISIANA PUBLIC SERVICE COMMISSION,

Petitioners,

v.

FEDERAL POWER COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

PETITION OF STATE OF LOUISIANA AND ALLIED PETITIONERS FOR REHEARING

The petitioners herein respectfully move this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered April 29, 1974, and (2) granting the petition. As grounds for this motion, petitioners state as follows:

There are intervening circumstances of substantial or controlling effect which warrant rehearing by this Court of its denial of certiorari in this proceeding on April 29, 1974.[1] The

---

[1] *Massey v. United States*, 291 U.S. 608.

Federal Power Commission (FPC) opposed certiorari review here on the ground, *inter alia*, that a so-called Hinshaw Amendment exemption under §1(c) of the Natural Gas Act could not lawfully be granted unless the state in which a pipeline, whose operations are primarily of local concern, is situated regulates all aspects of its direct industrial sales to the same extent as they would be regulated by this federal agency. This Court's consideration and disposition of this case was in the context of its express holding [2] that Louisiana's Constitution prohibited its state Public Service Commission from regulating any aspect of the sales of natural gas to direct industrial users. However, on April 20, 1974, the citizens of Louisiana approved a new Constitution which removes this prohibition and takes effect on December 31, 1974.[3]

The denial of certiorari here, in the light of the intervening circumstances of the removal of the preexisting Constitutional impediment to state regulation of direct industrial sales, will leave the status of scores of Hinshawed pipelines in a state of uncertainty which will have grave and material adverse consequences to the national interest. This Court's denial of certiorari, coupled with the novel and broad rationale advanced by the FPC [4] and United,[5] makes it impossible for the owners and operators of currently Hinshawed local pipelines operating in the 36 states which do not regulate direct industrial sales to the same extent as the FPC [6] to determine whether their exemptions will be revoked and makes it equally

---

[2] *FPC v. Louisiana Power and Light Company*, 406 U.S. 621, 633.

[3] Proposed Constitution of the State of Louisiana, reprinted in the *State Times*, Baton Rouge, Louisiana on Friday, February 22, 1974. Fifteen certified copies have this date been filed with the Clerk of the Court for distribution.

[4] Opposition to Certiorari, p. 16, n. 11.

[5] Opposition to Certiorari, p. 13.

[6] "Federal and State Commission Jurisdiction and Regulation, Electric, Gas and Telephone Utilities" (1967) published by the Federal Power Commission.

impossible for the legislatures of these states to determine whether an amendment of their state statutes will be effective to preserve the local control they now exercise over such pipelines. Worse still, neither independent producers nor intrastate pipelines nor state or federal regulatory bodies can operate and plan rationally in this climate of uncertainty. Yet the current acute and clearly longlasting shortages of all forms of fossil fuels in the United States is of crisis dimensions and imperatively requires, in the national interest, that this uncertainty be clearly eliminated as soon as possible.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioners pray that this Court grant rehearing of the Order of Denial, vacate that Order, grant the petition and review the judgement and opinion below.

Respectfully submitted,

STATE OF LOUISIANA, LOUISIANA MUNICIPAL ASSOCIATION AND LOUISIANA PUBLIC SERVICE COMMISSION

THE HONORABLE EDWIN EDWARDS
Governor of the State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

HONORABLE WILLIAM J. GUSTE, JR.
Attorney General of the State
of Louisiana
State Capitol Building
Baton Rouge, Louisiana

ARNOLD D. BERKELEY
Suite 504, 1735 Eye Street, N.W.
Washington, D.C. 20006
(202) 785-0611

Their Attorney

May, 1974

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

/s/ Arnold D. Berkeley
Counsel for Petitioner